

1. Applicant's Name:

a. **Application Date:** 29 November 2023

b. **Date Received:** 4 December 2023

c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is Uncharacterized. The applicant requests an upgrade to Honorable and changes to their separation and reentry codes.

b. The applicant seeks relief contending, the discharging commander listed a separation code of "JFW" on their DD Form 214 (Certificate of Release or Discharge from Active Duty) and their character of service as "Uncharacterized"; however, they disclosed their back condition prior to their enlistment, as they were issued a waiver by the medical board (Office of the U.S. Recruiting Command (USAREC) Surgeon). These proceedings stated that the applicant did **NOT** disclose their back issues at MEPS (Military Entrance Processing Station) or during their enlistment process. Their Medical Assessment (DD Form 2697), completed by the Family Nurse Practitioner at Fort Moore, handwritten on page two that this condition was made known prior to enlistment and that the applicant "entered service with waiver". Nevertheless, their condition became "symptomatic during training."

(1) The applicant is contending, this separation code (JFW) means they enlisted erroneously with a medical condition, which would disqualify them from service – with no medical waiver approved. The DA Form 4856 (Developmental Counseling Form) again claimed the applicant did not disclose their condition, which caused for EPTS (Existing Prior to Service). It also stated with less than 181 days of continuous service, their service would be characterized as Uncharacterized. The applicant served continuously for 280 days (3 January 2023 – 12 October 2023).

(2) During this time, they were treated for an injury received while actively training to their right shoulder. On 2 May 2023, they had surgery for a right anterior and posterior labral repair and a subpec biceps tenodesis with subsequent physical therapy and limitations on training. They were told the injury was serious and would require nine months of rehabilitation to fully recover and resume training (See medical records). However, they were released from rehab for this shoulder injury the beginning of August 2023 when the EPTS proceedings began. The issue with their shoulder was to take at least four more months to heal. Currently, with the current discharge characterization and code given to the applicant, they do not have the ability to receive any type of therapy or rehab services through Veterans Affairs (VA).

(3) The applicant contends, a change to their DD Form 214 will reflect the circumstances of their separation more clearly with a General characterization of service, a separation code of "JFV or JFN", and RE-2 reentry code. This would allow them the opportunity to pursue a career in Law Enforcement, as well as possibly re-enlist, if there was a need due to war or another American crisis.

c. **Board Type and Decision:** In a records review conducted on 15 November 2024, and by a 5-0 vote, the board denied the request upon finding the separation was both proper and equitable.

*Please see Section 9 of this document for more detail regarding the Board's decision.
(Board member names available upon request)*

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Failed Medical/Physical/Procurement Standards / AR 635-200, [Chapter 5-11] / JFW / RE-3 / Uncharacterized

b. Date of Discharge: 12 October 2023

c. Separation Facts:

(1) Date of Entrance Physical Standards Board (EPSBD) convened: 26 June 2023

(2) EPSBD Findings: The findings of the evaluating physicians indicate the applicant was medically unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians, the condition existed prior to service. The applicant was diagnosed with Low Back Pain, Unspecified; they were in holdover status for initial enlistment training (IET) and identified as having an EPTS (Existed Prior to Service) condition on 21 June 2023. Subjectively, they had history of Radiculopathy (left L5/S1), large, calcified disk herniation; left L5/S1 with lateral recess stenosis and foraminal stenosis; had microsurgical laminotomy, disectomy, and foraminotomy, left L5/S1.

(a) They presented to MEPS (Military Entrance Processing Station) with medical records stating all symptoms resolved and was provided with a waiver for enlistment. The applicant initially reported to clinic on 13 April 2023 with the first recorded statement of chronic lower back pain. They returned 21 June 2023 and stated continued back pain. They denied having any new injury to their lower back since the onset of training. The applicant stated symptoms have been ongoing despite surgery; however, this was not disclosed at MEPS, and subsequently, the EPTS was initiated.

(b) The applicant did meet medical fitness standards for enlistment per AR DODI 6130.03, Section 6.16.h. A history of lumbar disc pathology, including, but not limited to, bulges, herniations, protrusions, and extrusions associated with symptoms, treatment, or limitations of activities of daily living or a physically active lifestyle, in the previous 24 months or any history of recurrent symptoms. The EPTS indicator was marked "yes" and "no" for Service-aggravated. These findings were approved by the Senior MEB (Medical Evaluation Board) Physician on 29 August 2023. The applicant concurred with these proceedings and requested to be discharged from the U.S. Army without delay.

(3) Date Applicant Reviewed and Concurred with the Findings, and Requested Discharge without Delay: 18 September 2023

(4) Legal Consultation Date: 19 September 2023

(5) Separation Decision Date / Characterization: 19 September 2023 / Uncharacterized

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 22 November 2022 / 4 years, 28 weeks

b. Age at Enlistment / Education / GT Score: 21 / High School Diploma / NIF

c. **Highest Grade Achieved / MOS / Total Service:** E-3 (PFC) / None / 9 months, 10 days

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** None

f. **Awards and Decorations:** None

g. **Performance Ratings:** NA

h. **Disciplinary Action(s) / Evidentiary Record:**

(1) On 22 November 2022, the applicant enlisted in the Regular Army for 4 years and 28 weeks as a PVT (E-1), with an approved medical waiver from the Office of the United States Army Recruiting Command Surgeon (COL) dated 28 September 2022. They received waivers for their shellfish allergy and for "their history of microsurgical discectomy with normal function post-surgery." They reported to Fort Benning Training Center, GA for basic combat training on 26 December 2022.

(2) On 15 May 2023, the Orthopedic Physician notes: the applicant came in for routine postoperative visit, following anterior and posterior labral repairs (7 anchors), open subpec biceps tenodesis on 2 May. The applicant did well with pain control postoperatively and continued to progress appropriately with therapy. They were to continue rehab following the labral repair protocol; remain in a sling for a total of six weeks post-operatively; no strengthening for three months; and had to follow up after four weeks. There were no concerns at that time. The applicant underwent a serious shoulder stabilization surgery and will require nine months rehabilitation to recover from this surgery. The Dr. further discussed the possibility of a medical release from duty, in which they fully supported, and cleared the applicant to be released and get rehab at home. With a full recovery, the applicant would be able to reenlist in one year.

(3) On 28 August 2023, a medical assessment provides the applicant's health was the same since their last physical examination; they have had physical therapy on their right shoulder for the last six months, which has caused them to miss duty for longer than three days; the applicant has been to the ER (MACH), physical therapy, sick call (plus back pain), and Orthopedics for their right shoulder pain; and undergone labral surgery. They indicated "chronic lower back pain" as a condition limiting their ability to work and elected to not seek disability from the VA.

(4) The same day, the company commander counseled the applicant on the recommendation for Existing Prior to Service (EPTS), consequently, they were flagged for involuntary separation. They agreed and provided no remarks on their behalf.

(5) On 10 October 2023, their separation orders were issued. A DD Form 214 (Certificate of Release or Discharge from Active Duty) provides the applicant was discharged accordingly on 12 October 2023, with the following:

- Authority: AR 635-200, [Chapter 5-11]
- Narrative Reason: Failed Medical/Physical/Procurement Standards
- SPD Code: JFW
- Reentry Code: RE-3
- Service Characterization: Uncharacterized
- Total NET Active Service Period: 9 months, 10 days
- Remarks: Member has not completed first full term of service.

- Lost Time: None
- Signature: They were unable to electronically sign.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: Application for the Review of Discharge; Self-Authored Statement; Certificate of Release or Discharge from Active Duty; Developing Counseling Form; Entrance Physical Standards Board (EPSBD) Proceedings; Report of Medical Assessment; Medical Records (Martin-Benning Army Community Clinic); Enlistment Document; Active Duty Orders; Medical Waiver Approval Record

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo]).

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual

assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 17 December 2009, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) An Under other-than-honorable-conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government. A Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status. Soldiers who were not medically qualified under procurement medical fitness standards, when accepted for enlistment, or who

became medically disqualified under these standards prior to entry on active duty or active duty training or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within six months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at that time, and the medical condition does not disqualify the Soldier from retention in the service under the provisions of AR 40-501, Chapter 3.

(5) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JFW" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 5-11, Failed Medical/Physical Procurement Standards.

f. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to Honorable and changes to their separation and reentry codes. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

b. The applicant enlisted in the Regular Army and was in training at Fort Benning, GA, promoted up to PFC (E-3), and served on continuous active duty for 283 days, prior to the initiation of an EPTS. The proceedings of the EPSBD revealed the applicant had a medical

condition, which was disqualifying for enlistment and existed prior to the entry on active duty. These findings were approved by competent medical authority and the applicant agreed with the findings and proposed action for administrative separation from the Army. Separation proceedings were initiated under the provisions of AR 635-200, Chapter 5-11, Failed Medical/Physical/Procurement Standards, with an Uncharacterized discharge. They served 9 months and 10 days of their 4 year-28 week contractual obligation.

c. Chapter 5 provides for the basic separation of enlisted personnel for the convenience of the government. A Soldier being separated under this paragraph will be awarded a characterization of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status. Soldiers who were not medically qualified under procurement medical fitness standards, when accepted for enlistment, or who became medically disqualified under these standards prior to entry on active duty or active duty training or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within six months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at that time, and the medical condition does not disqualify the Soldier from retention in the service under the provisions of AR 40-501, Chapter 3.

d. Published DoD guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **No.** The Board's Medical Advisor reviewed DoD, and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? **N/A**

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) The applicant seeks relief contending, the discharging commander listed a separation code of "JFW" on their DD Form 214 (Certificate of Release or Discharge from Active Duty) and their character of service as "Uncharacterized"; however, they disclosed their back condition prior to their enlistment, as they were issued a waiver by the medical board (Office of the U.S. Recruiting Command (USAREC) Surgeon).

The board considered this contention and determined that the EPSBD proceedings stated that the applicant did not disclose their back issues at MEPS (Military Entrance Processing Station) or during their enlistment process. Their Medical Assessment (DD Form 2697), completed by

the Family Nurse Practitioner at Fort Moore, handwritten on page two explained that this condition was made known prior to enlistment and that the applicant "entered service with waiver". However, their condition became "symptomatic during training." Additionally, the applicant agreed with the company commander's counseling recommending involuntary separation, and the applicant agreed and provided no remarks on their behalf.

(1) The applicant is contending, this separation code (JFW) means they enlisted erroneously with a medical condition, which would disqualify them from service – with no medical waiver approved. The DA Form 4856 (Developmental Counseling Form) again claimed the applicant did not disclose their condition, which caused for EPTS (Existing Prior to Service). It also stated with less than 181 days of continuous service, their service would be characterized as Uncharacterized. The applicant served continuously for 280 days (3 January 2023 – 12 October 2023).

The board considered this contention during deliberations. However, the applicant's physician discussed the possibility of a medical release from duty, and the applicant fully supported and the applicant was released to obtain rehabilitation at home.

(2) The applicant contends, during this time, they were treated for an injury received while actively training to their right shoulder. On 2 May 2023, they had surgery for a right anterior and posterior labral repair and a subscapularis tenodesis with subsequent physical therapy and limitations on training. They were told the injury was serious and would require nine months of rehabilitation to fully recover and resume training (See medical records). However, they were released from rehab for this shoulder injury the beginning of August 2023 when the EPTS proceedings began. The issue with their shoulder was to take at least four more months to heal. Currently, with the current discharge characterization and code given to the applicant, they do not have the ability to receive any type of therapy or rehab services through Veterans Affairs (VA).

The board considered this contention and determined the applicant, while in training status, was evaluated by competent medical authorities and determined the findings of the evaluating physicians indicate the applicant was medically unfit for appointment or enlistment in accordance with current medical fitness standards. In the opinion of the evaluating physicians, the condition existed prior to service.

(3) The applicant contends, a change to their DD Form 214 will reflect the circumstances of their separation more clearly with a General characterization of service, a separation code of "JFV or JFN", and RE-2 reentry code. This would allow them the opportunity to pursue a career in Law Enforcement, as well as possibly re-enlist, if there was a need due to war or another American crisis.

The board considered this contention and determined the applicant received the proper characterization of service and reentry code. A general discharge under honorable conditions is not authorized under entry level conditions in accordance with Army regulations. Additionally, the separation code of JFV is given to Soldiers who are discharged for a condition that is not a disability.

d. The board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

e. Rationale for Decision:

(1) The board voted not to change the applicant's characterization of service because there were no mitigating factors for the board to consider. The applicant was discharged for failing medical procurement standards after being diagnosed with an existing medical condition (Low Back Pain, Unspecified). The physician discussed the possibility of a medical release from duty, which the applicant supported, and the applicant was cleared to be released and obtain rehabilitation from home. With a full recovery, the applicant would be able to reenlist in one year. The applicant agreed with the separation and provided no remarks. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

(2) The board voted not to change the applicant's reason for discharge or accompanying SPD code under the same rationale, as the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

c. Issue a New DD-214 / Separation Order: No

d. Change Characterization to: No Change

e. Change Reason / SPD code to: No Change

f. Change RE Code to: No Change

g. Change Authority to: No Change

Authenticating Official:

11/20/2024

X

Presiding Officer, COL, U.S. ARMY

Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs